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DEPARTMENT OF JUSTICE

28 CFR Part 16

CPCLO Order No. 005-2013

Exemption of Records Systems Under the Privacy Act

AGENCY: Executive Office for Organized Crime Drug Enforcement Task Forces (OCDETF), Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Justice (the Department or DOJ) proposes to amend its Privacy Act regulations for two systems of records entitled the “Drug Enforcement Task Force Evaluation and Reporting System, JUSTICE/DAG-003,” last published, March 10, 1992 in the Federal Register, and the “Organized Crime Drug Enforcement Task Force Fusion Center and International Organized Crime Intelligence and Operations Center System, JUSTICE/CRM-028,” last published, June 3, 2009 in the Federal Register. These Privacy Act regulations are being amended to reflect a recent reorganization of the Department establishing the Executive Office for OCDETF as a separate DOJ component, and transferring responsibility for these systems from the Office of the Deputy Attorney General (ODAG) and the Criminal Division to this component. In light of this departmental reorganization, JUSTICE/DAG-003 is being renumbered to JUSTICE/OCDETF-001 and will be renamed as the “Organized Crime Drug Enforcement Task Forces Management Information System (OCDETF MIS).”

JUSTICE/CRM-028 is being renumbered to JUSTICE/OCDETF-002 but will retain its system name. When under the responsibility of ODAG and the Criminal Division, these systems were exempted from certain provisions of the Privacy Act of 1974 by exemptions placed in the Code of Federal Regulations (CFR) sections containing exemptions for ODAG's and the Criminal Division's Privacy Act systems. These proposed amendments will remove references to these systems from the CFR sections for ODAG and Criminal Division exemptions and add a new section for OCDETF exemptions. Public comment is invited.

DATES: Comments must be received by [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Address all comments to Privacy Analyst, Office of Privacy and Civil Liberties, National Place Building, 1331 Pennsylvania Avenue NW., Suite 1000, Washington, DC 20530, or by facsimile to 202-307-0693. To ensure proper handling, please reference the CPCLO Order Number on your correspondence. You may review an electronic version of the proposed rule at <http://www.regulations.gov>, and you may also comment by using that website's comment form for this regulation. Please include the CPCLO Order Number in the subject box.

Please note that the Department is requesting that electronic comments be submitted before midnight Eastern Time on the day the comment period closes because this is when <http://www.regulations.gov> terminates the public's ability to submit comments. Commenters in time zones other than Eastern Time may want to consider this so that their electronic comments are received. All comments sent via regular or express

mail will be considered timely if postmarked on or before the day the comment period closes.

Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov> and in the Department's public docket. Such information includes personally identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personally identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "PERSONALLY IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also place all the personally identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personally identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted

form, will be posted online and placed in the Department's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

FOR FURTHER INFORMATION CONTACT: Jill Aronica, Chief Information Systems Section, Executive Office for OCDETF, U.S. Department of Justice, 1331 Pennsylvania Avenue NW., Suite 1060, Washington, DC 20530, phone 202-514-1860.

SUPPLEMENTARY INFORMATION: In the Notices section of today's Federal Register, the Department has published two modified systems of records notices for the "Organized Crime Drug Enforcement Task Force Fusion Center and International Organized Crime Intelligence and Operations Center System" (last published at 74 FR 26733 (June 3, 2009)) and the "Organized Crime Drug Enforcement Task Forces Management Information System" (last published at 57 FR 8473 (March 10, 1992)). Previously, when these systems were under the purview of ODAG and of the Criminal Division, these systems of records were exempted from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k). These exemptions were promulgated in the sections of the CFR for exemptions of ODAG systems (28 CFR 16.71) and of Criminal Division systems (28 CFR 16.91). The Department is now proposing to establish a new section for exemptions of OCDETF systems (28 CFR 16.135); to delete references to the exemptions for the Drug Enforcement Task Force Evaluation and Reporting System, JUSTICE/DAG-003 in 28 CFR 16.71; and to delete references to the Organized Crime Drug Enforcement Task Force Fusion Center and International Organized Crime Intelligence and Operations Center System, JUSTICE/CRM-028 in 28 CFR 16.91. The

Department intends that the exemptions previously established under 28 CFR 16.71 and 28 CFR 16.91 will continue to apply to these systems and all their records until the effective date of 28 CFR 16.135.

Regulatory Flexibility Act

This proposed rule relates to individuals, as opposed to small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, the proposed rule will not have a significant economic impact on a substantial number of small entities.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 801 et seq., requires the Executive Office for OCDETF to comply with small entity requests for information and advice about compliance with statutes and regulations within the Executive Office for OCDETF's jurisdiction. Any small entity that has a question regarding this document may contact the person listed in **FOR FURTHER INFORMATION CONTACT**. Persons can obtain further information regarding SBREFA on the Small Business Administration's Web page at <http://www.sba.gov/advocacy/825>.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), requires that the Executive Office for OCDETF consider the impact of paperwork and other information collection burdens imposed on the public. There are no current or new information collection requirements associated with this proposed rule. The records that are contributed to this system would be created in any event by law enforcement entities and

their sharing of this information electronically will not increase the paperwork burden on these entities.

Analysis of Regulatory Impacts

This proposed rule is not a "significant regulatory action" within the meaning of Executive Order 12866 and therefore further regulatory evaluation is not necessary. This proposed rule will not have a significant economic impact on a substantial number of small entities, because it applies only to information about individuals.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. No. 104-4, 109 Stat. 48, requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A "Federal mandate" is a new or additional enforceable duty imposed on any State, local, or tribal government or the private sector. If any Federal mandate causes those entities to spend, in aggregate, \$100 million or more in any one year, the UMRA analysis is required. This proposed rule would not impose Federal mandates on any State, local, or tribal government or the private sector.

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of information, Privacy, Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 2940-2008, the Department of Justice proposes to amend 28 CFR part 16 as follows:

PART 16--[AMENDED]

1. The authority citation for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

Subpart E--Exemption of Records Systems Under the Privacy Act

§16.71 [AMENDED]

2. Amend §16.71 as follows:

- a. Remove the existing paragraphs (c)(1) and (c)(2) and amend paragraph (c) to read as follows: “The General Files System of the Office of the Deputy Attorney General (JUSTICE/DAG-013) is exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (2), (3) and (5); and (g).”

- b. Remove the first two sentences of paragraph (d);

- c. Remove existing paragraph (e)(7); and

- d. Redesignate paragraph (e)(8) as paragraph (e)(7).

§16.91 [AMENDED]

3. Amend §16.91 by removing paragraphs (u) and (v)

§16.135 [ADDED]

4. Add §16.135 to subpart E to read as follows:

§ 16.135 Exemptions of Executive Office for Organized Crime Drug Enforcement Task Forces Systems.

(a) The following systems of records are exempt from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G), (H), and (I), (5), and (8); (f); and (g):

(1) The Organized Crime Drug Enforcement Task Forces Management Information System (OCDETF MIS) (JUSTICE/OCDETF-001); and

(2) The Organized Crime Drug Enforcement Task Force Fusion Center and International Organized Crime Intelligence and Operations Center System (JUSTICE/OCDETF-002).

(b) These exemptions apply only to the extent that information is subject to exemption under 5 U.S.C. 552a(j) and/or (k).

(c) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because to provide the subject with an accounting of disclosures of records in these systems could inform that individual of the existence, nature, or scope of an actual or potential law enforcement or counterintelligence investigation by the Organized Crime Drug Enforcement Task Forces, the Organized Crime Drug Enforcement Task Force Fusion Center, the International Organized Crime Intelligence and Operations Center, or the recipient agency, and could permit that individual to take measures to avoid detection or apprehension, to learn of the identity of witnesses and informants, or to destroy evidence, and would therefore present a serious impediment to law enforcement or counterintelligence efforts. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record. Moreover, release of an accounting may reveal information that is properly classified pursuant to Executive Order.

(2) From subsection (c)(4) because this subsection is inapplicable to the extent that an exemption is being claimed for subsections (d)(1), (2), (3), and (4).

(3) From subsection (d)(1) because disclosure of records in the system could alert the subject of an actual or potential criminal, civil, or regulatory violation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his or her activities, of the identity of confidential witnesses and informants, of the investigative interest of the Organized Crime Drug Enforcement Task Forces, the Organized Crime Drug Enforcement Task Force Fusion Center, the International Organized Crime Intelligence and Operations Center, and other intelligence or law enforcement agencies (including those responsible for civil proceedings related to laws against drug trafficking or related financial crimes or international organized crime); could lead to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; could reveal the details of a sensitive investigative or intelligence technique, or the identity of a confidential source; or could otherwise impede, compromise, or interfere with investigative efforts and other related law enforcement and/or intelligence activities. In addition, disclosure could invade the privacy of third parties and/or endanger the life, health, and physical safety of law enforcement personnel, confidential informants, witnesses, and potential crime victims. Access to records could also result in the release of information properly classified pursuant to Executive Order.

(4) From subsection (d)(2) because amendment of the records thought to be inaccurate, irrelevant, incomplete, or untimely would also interfere with ongoing investigations, criminal or civil law enforcement proceedings, and other law enforcement activities; would impose an impossible administrative burden by requiring investigations, analyses, and reports to be continuously reinvestigated and revised; and may impact

information properly classified pursuant to Executive Order.

(5) From subsections (d)(3) and (4) because these subsections are inapplicable to the extent that exemption is claimed from subsections (d)(1) and (2) and for the reasons stated in paragraphs (b)(3) and (b)(4), above.

(6) From subsection (e)(1) because, in the course of their acquisition, collation, and analysis of information under the statutory authority granted, the Organized Crime Drug Enforcement Task Forces, the Organized Crime Drug Enforcement Task Force Fusion Center, and the International Organized Crime Intelligence and Operations Center will occasionally obtain information, including information properly classified pursuant to Executive Order, that concerns actual or potential violations of law that are not strictly within their statutory or other authority or may compile and maintain information which may not be relevant to a specific investigation or prosecution. This is because it is impossible to determine in advance what information collected during an investigation or in support of these mission activities will be important or crucial to an investigation. In the interests of effective law enforcement, it is necessary to retain such information in this system of records because it can aid in establishing patterns of criminal activity of a suspect and can provide valuable leads for federal and other law enforcement agencies. This consideration applies equally to information acquired from, or collated or analyzed for, both law enforcement agencies and agencies of the U.S. foreign intelligence community and military community.

(7) From subsection (e)(2) because in a criminal, civil, or regulatory investigation, prosecution, or proceeding, the requirement that information be collected to the greatest extent practicable from the subject individual would present a serious

impediment to law enforcement because the subject of the investigation, prosecution, or proceeding would be placed on notice as to the existence and nature of the investigation, prosecution, or proceeding and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Moreover, thorough and effective investigation and prosecution may require seeking information from a number of different sources.

(8) From subsection (e)(3) because to comply with the requirements of this subsection during the course of an investigation could impede the information-gathering process, thus hampering the investigation or intelligence gathering. Disclosure to an individual of investigative interest would put the subject on notice of that fact and allow the subject an opportunity to engage in conduct intended to impede that activity or avoid apprehension. Disclosure to other individuals would likewise put them on notice of what might still be a sensitive law enforcement interest and could result in the further intentional or accidental disclosure to the subject or other inappropriate recipients, convey information that might constitute unwarranted invasions of the personal privacy of other persons, unnecessarily burden law enforcement personnel in information-collection activities, and chill the willingness of witnesses to cooperate.

(9) From subsections (e)(4)(G) and (H) because this system is exempt from the access and amendment provisions of subsection (d).

(10) From subsection (e)(4)(I) to the extent that this subsection could be interpreted to require more detail regarding system record sources than has been published in the Federal Register. Should this subsection be so interpreted, exemption from this provision is necessary to protect the sources of law enforcement and intelligence information and to

protect the privacy and safety of witnesses and informants and other information sources. Further, greater specificity could compromise other sensitive law enforcement information, techniques, and processes.

(11) From subsection (e)(5) because the acquisition, collation, and analysis of information for law enforcement purposes from various agencies does not permit a determination in advance or a prediction of what information will be matched with other information and thus whether it is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light, and the accuracy of such information can often only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators, intelligence analysts, and government attorneys to exercise their judgment in collating and analyzing information and would impede the development of criminal or other intelligence necessary for effective law enforcement.

(12) From subsection (e)(8) because the individual notice requirements could present a serious impediment to law enforcement by revealing investigative techniques, procedures, evidence, or interest, and by interfering with the ability to issue warrants or subpoenas; could give persons sufficient warning to evade investigative efforts; and would pose an unacceptable administrative burden on the maintenance of these records and the conduct of the underlying investigations.

(13) From subsections (f) and (g) because these subsections are inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act.

Date: 8/21/13

Joo Y. Chung
Acting Chief Privacy and Civil Liberties Officer
United States Department of Justice

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